No. 85-1477

Supreme Court, U.S.
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In The Supreme Court Of The United States

OCTOBER TERM, 1985

JANET LUCY, Personal Representative of the Estate of RAYMOND LUCY, Deceased; and JANET LUCY, DLORAH LUCY, and ANGELA LUCY, Individually,
Petitioners,

v.

AMOCO OIL COMPANY, a Maryland corporation,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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APPLICABLE STATUTORY PROVISIONS

At issue are Sections 2801(B)(iii), 2802(b)(2)(C) and 2802(c)(1)-(12) of the Petroleum Marketing Practices Act ("PMPA"), 15 U.S.C. §2801, *et seq.*, the text of which appear in the Appendix.

STATEMENT OF THE CASE

Petitioners, the estate and surviving family members of former Amoco[1] franchisee Raymond Lucy, brought suit in the United States District Court for the Eastern District of Michigan challenging Amoco's termination of an unexpired service station lease agreement with Raymond Lucy. Pursuant to a series of lease agreements, Raymond Lucy leased and operated an Amoco gasoline service station from 1967 until his death on September 11, 1982. Upon his death, Amoco terminated the existing lease, as expressly permitted by Subparagraph 15(g) of the lease. (Petitioners' App. B, B-5).

Claiming that Subparagraph 15(g) was unenforceable, Petitioners sought injunctive relief requiring Amoco to recognize Petitioners as successor franchisees for the duration of the lease, an additional two years and ten months. Petitioners alleged, *inter alia,* that termination of the franchise was

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[1] Respondent Amoco Oil Company, a Maryland corporation, is a wholly owned subsidiary of Amoco Corporation, an Indiana corporation formerly known as Standard Oil Company. Rule 28.1.

unlawful because the Petroleum Marketing Practices Act ("PMPA"), 15 U.S.C. §2801, *et seq.*, does not expressly recite death of the franchisee as a ground for termination of an existing franchise.[2]

PMPA Section 2802(b)(2) lists certain grounds upon which a franchisor may terminate an existing franchise. Among those grounds is a general provision permitting termination upon the occurrence of a "relevant event" justifying termination. 15 U.S.C. §2802(b)(2)(C). (App. 1a).

Amoco moved for summary judgment on Petitioners' PMPA claim arguing, first, that death is a "relevant event" within the meaning of Section 2802(b)(2)(C) and, second, that PMPA Section 2801(B)(iii) authorized Amoco to restrict the transfer or assignment of the franchise, and thereby to select the successor franchisee of Amoco's choice, subject only to the terms of the underlying Raymond Lucy-Amoco lease agreement. 15 U.S.C. §2801(B)(iii); §2806(b). (App. 1a, 4a).[3]

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[2] Applicability of the PMPA is not in dispute. The parties agree that Amoco was a "franchisor" within the meaning of Section 2801(3), that Raymond Lucy was a "franchisee" within the meaning of Section 2802(4), and that a "franchise" and "franchise relationship" existed between them within the meaning of Section 2802(2), as the lease between Raymond Lucy and Amoco was a "franchise" as defined by the PMPA. No claim is made that any of the individual Petitioners, i.e., Janet Lucy, Dlorah Lucy or Angela Lucy, was ever a party to a franchise or franchise relationship with Amoco.

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[3] Subparagraphs 14(a) and (b) of the Raymond Lucy-Amoco lease agreement required Amoco's consent to any transfer or assignment by Raymond Lucy. (Petitioners' App. B, B-5). Consequently, Amoco was not required by statute to entrust its capital investments, trademarks, and tradenames to Raymond Lucy's family members.

The district court agreed, granting Amoco's motion and entering summary judgment in Amoco's favor on June 23, 1983.[4] (Petitioners' App. A). Petitioners timely appealed to the United States Court of Appeals for the Sixth Circuit which, on November 22, 1985, entered an order affirming the district court. (Petitioners' App. B, B-1).

SUMMARY OF ARGUMENT

The PMPA establishes specific grounds for the termination of petroleum franchise relationships. Congress created a flexible statutory framework to protect franchisees from arbitrary or discriminatory terminations, while ensuring to franchisors the right to terminate the franchise where the franchisee's conduct or other events materially affect the franchise. 15 U.S.C. §2802; S. Rep. 95-731, pp. 37-38; *Brach v. Amoco Oil Co.*, 677 F.2d 1213 (7th Cir. 1982).

The PMPA does not specifically enumerate all permissible grounds for termination. Rather, it permits termination of a franchise upon the occurrence of a "relevant event," 15 U.S.C. 2802(b)(2). Section 2802(c) sets forth a non- exclusive list of such "relevant events." (App. 2a-3a). The list of such specific events in Section 2802(c) was intended to provide guidance to the courts of the types of events that would justify

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[4] Summary judgment was also entered in Amoco's favor on Petitioners' claims of tortious interference with prospective business advantage and intentional infliction of emotional distress. Summary judgment was denied on Petitioners' claims of sex and age discrimination in violation of the real estate transaction provisions of Michigan's Elliott-Larsen Civil Rights Act, M.C.L.A. §37.2502, *et seq.* Those claims were subsequently tried by jury, resulting in a verdict for Amoco on each count. The jury verdict was affirmed by the United States Court of Appeals for the Sixth Circuit. (Petitioners' App. B, B-1).

termination. Many of the illustrative events, such as the severe physical or mental disability of the franchisee, pertain to the named franchisee's ability to operate the marketing premises. Death of the franchisee is comparable to several of the enumerated events and is an even more compelling (and permanent) circumstance justifying termination of the franchise.

Subparagraphs 14(a) and (b) of the underlying Raymond Lucy-Amoco franchise agreement prohibited Raymond Lucy's unilateral transfer or assignment of the franchise. (Petitioners' App. B, B-5). Petitioners' reading of the statute would nullify this provision of the agreement and grant to Raymond Lucy a power in death which he did not have in life: to assign the franchise to his surviving family members without Amoco's consent.

Nothing in the spirit or terms of the PMPA requires this result. Indeed, every lower court which has considered the matter has concluded both that termination is permissible upon death of the franchisee and that lease provisions precluding assignment to surviving family members, without consent of the franchisor are enforceable.[5]

The logic and language of the PMPA, as well as its substantial legislative history leave little doubt that the issues raised in the Petition have been properly resolved by the lower courts and do not merit this Court's review. Because there is no conflict among the federal appellate courts or state courts of last

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[5] *Kostantas v. Exxon Co., U.S.A.*, 663 F.2d 605 (5th Cir. 1981); *Lanham v. Amoco Oil Company*, 481 F. Supp. 405 (D. Md. 1979); *Blankenship v. Knox Oil Company*, 548 F. Supp. 789 (E.D. Tenn. 1982); *Ianuzzi v. Exxon Co., U.S.A.*, 572 F. Supp. 716 (D.N.J. 1983); *Estate of Garo Mamourian and Mary Cherkezyan v. Exxon*, 47 CCH Business Franchise Guide ¶8093 (D.N.J. 1983); *Attal v. Shell Oil Co.*, 41 CCH Business Franchise Guide ¶8025 (N.J. Superior Ct. 1983); *See also Exxon Corp. v. Vincent*, 51 CCH Business Franchise Guide 8172 (D.Tex. 1983).

resort, Amoco respectfully requests that the Petition for Writ of Certiorari be denied.

ARGUMENT

I.

THE COURT OF APPEALS' HOLDING THAT THE PMPA PERMITS TERMINATION OF A GASOLINE FRANCHISE UPON THE DEATH OF THE FRANCHISEE IS CONSISTENT WITH THE LANGUAGE AND HISTORY OF THE ACT AND ALL REPORTED DECISIONS AND DOES NOT PRESENT ANY QUESTION WORTHY OF REVIEW.

The statutory standards governing termination of petroleum franchise relationships are set forth in PMPA Section 2802. 15 U.S.C. §2802. Among the permissible grounds for termination is the following:

> The occurrence of an event which is relevant to the franchise relationship and as a result of which termination of the franchise or nonrenewal of the franchise relationship is reasonable .... 15 U.S.C. §2802(b)(2)(C).

Section 2802(c) then sets forth a non-exclusive list of twelve separate events exemplifying the types of events considered sufficiently "relevant" to warrant termination of a franchise. 15 U.S.C. §2802(c)(1)-(12). (App. 2a-3a).

Death of a franchisee is not listed in Section 2802(c) or elsewhere as an event justifying termination. However, both Section 2802(c) by its terms and the legislative history of the PMPA explicitly provide that the twelve events described are not intended to be exclusive, but rather are a measure of Congressional intent as to the meaning of the term "relevant

event." *See,* S. Rep. at 37-38; See also, *Brach v. Amoco Oil Co.*, 677 F.2d 1213 (7th Cir., 1982).

Each of the six lower court decisions reported to date holds that the PMPA permits termination of an existing franchise upon the death of the named franchisee.[6] Representative of these decisions is *Lanham v. Amoco Oil Co.*, 481 F. Supp. 405 (D. Md. 1979), wherein summary judgment was granted in favor of the franchisor. Noting that death was not expressly specified as a ground for termination, the district court held that death was a relevant event within the meaning of Section 2802(b)(2)(C), emphasizing that, "It is merely logical to determine that death of the franchisee meets this standard." 481 F. Supp. at 407.

The *Lanham* court compared death of the franchisee to the grounds expressly provided in Section 2802(c)(3), which include "continuing severe physical or mental disability" as a relevant event. Because death of the franchisee more severely impacts the franchise than does his or her continuing physical disability, death was deemed an appropriate ground for termination.[7]

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[6] *Kostantas v. Exxon Co., U.S.A.*, 663 F.2d 605 (5th Cir. 1981); *Lanham v. Amoco Oil Company*, 481 F. Supp. 405 (D. Md. 1979); *Blankenship v. Knox Oil Company*, 548 F. Supp. 789 (E.D. Tenn. 1982); *Ianuzzi v. Exxon Co., U.S.A.*, 572 F. Supp. 716 (D.N.J. 1983); *Estate of Garo Mamourian and Mary Cherkezyan v. Exxon*, 47 CCH Business Franchise Guide ¶8093, (D.N.J. 1983); *Attal v. Shell Oil Co.*, 41 CCH Business Franchise Guide ¶8025 (N.J. Superior Ct. 1983); *See also Exxon Corp. v. Vincent*, 51 CCH Business Franchise Guide ¶8172 (D.Tex. 1983).

[7] *Accord, Blankenship v. Knox Oil Co.*, 548 F. Supp. 789 (E.D. Tenn. 1982); *Iannuzzi v. Exxon Co., U.S.A.*, 572 F. Supp. 716 (D.N.J. 1983); *Mamourian v. Exxon Co., U.S.A.*, 47 CCH Business Franchise Guide ¶8093 (D.N.J. 1983); *Attal v. Shell Oil Co.*, 41 CCH Business Franchise Guide ¶8025 (N.J. Superior Ct. 1983).

The only federal appellate court decision, *Kostantas v. Exxon Co., U.S.A.*, 663 F.2d 605 (5th Cir. 1981), reached the same result, although based upon a different rationale. As in *Lanham,* the franchisee's personal representative argued that death of the franchisee was not a specified ground for termination under the PMPA and that therefore, termination upon that ground was violative of the PMPA.

The Fifth Circuit affirmed dismissal for failure to state a claim upon which relief could be granted. Unlike *Lanham* however, the *Kostantas* court did not do so on the ground that death was a relevant event contemplated by Section 2802(b)(2)(C). Rather, the Fifth Circuit reasoned that both the lease and franchise agreement specifically provided for termination upon the death of the franchisee and that the PMPA was not designed to prohibit the enforcement of such provisions:

> [T]he Act is designed to protect franchisees from arbitrary and discriminatory termination or nonrenewal of a franchise for failure to comply with the marketing policies of a franchisor. . . . Nothing in the Act, however, requires a franchisor to create a permanent estate of inheritance in the franchise, thus disabling itself from selecting those with whom it wishes to deal. Such a result is foreign to the manifest purpose of the Act, to regulate the relationship between persons who have chosen to associate themselves. Death is not a circumstance that the Act was designed to cover.
>
> * * *
>
> The PMPA seeks to prevent abusive trade practices by franchisors, recognizing the disparity of bargaining power between the franchisors and the franchisees. The Act was not designed to create what is tantamount to a permanent estate in the franchise relationship. For these reasons, we conclude that the Act does not prohibit a contractual provision providing for termination upon the death of a franchisee. 663 F.2d at 606.

The same rationale applies here. Subparagraph 15(g) of the Raymond Lucy-Amoco lease expressly reserved to Amoco the right to terminate the lease upon Raymond Lucy's death. Additionally, paragraph 14 of the lease expressly prohibited assignment or transfer of the lease, by operation of law or otherwise, without Amoco's written consent.[8]

The Sixth Circuit Court of Appeals' affirmance of the judgment of the district court is thus correct. Regardless of the rationale used, whether the analysis holding death to be an event described by Section 2802 (b)(2)(C), or the analysis holding that the PMPA simply was not designed to apply to a contractual provision allowing termination upon death of the franchisee, death of the named franchisee is a permissible ground for termination under the PMPA.

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[8] Subparagraph 14(a) of the lease provided:

> Lessee shall not assign, mortgage or encumber this lease... without first obtaining the written consent of Lessor. Lessee's leasehold interest hereunder shall not be levied upon by or vested in any other party, by operation of law, judicial order or otherwise without Lessor's written consent.

Subparagraph 14(b) provided that Amoco would not unreasonably withhold its consent to any transfer, while expressly stating that such subparagraph did not apply in situations where Subparagraph 15(g) was applicable, i.e., upon death of the lessee, Raymond Lucy.

The Sixth Circuit's ruling in this case is in accord with *Kostantas* and is in accord with all other reported state court decisions and all federal district court decisions.[9] The applicable statutory provisions and the legislative history unambiguously indicate that judicial review to date is correct. Consequently, Petitioners fail to demonstrate that the issue should be reviewed on certiorari, and the Petition should be denied.

II.

THE COURT OF APPEALS' HOLDING THAT THE PMPA DOES NOT COMPEL SELECTION OF SURVIVING FAMILY MEMBERS AS SUCCESSOR FRANCHISEES IS CONSISTENT WITH THE LANGUAGE AND HISTORY OF THE ACT AND ALL REPORTED DECISIONS AND DOES NOT PRESENT A QUESTION WORTHY OF REVIEW.

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[9] The Court of Appeals for the Sixth Circuit did not issue a written opinion. However, in its ruling from the bench, it affirmed, based on *Kostantas,* the language of the PMPA and the language of the lease. The ruling of the court can be found on the audio recording of the November 11, 1985 hearing at minutes 40:30 to 41:45. For the convenience of the Court, a transcription of the ruling is set forth below:

> . . . We would grant your motion to file your brief, Mr. Benjamin, and allow you to present the issue to the court, concerning the death question. However, in view of the opinions of other Circuits, particularly the 5th, and in view of the language of the contract here in question, taking into account the language of the statute itself, we think that no error was committed by the court below in its interpretation of the contract or the Federal statute, and we would therefore affirm the district court in its judgment on that issue. . . .

The PMPA is designed to allay three specific concerns arising from the franchise relationship: that franchisee independence may be undermined by the use of actual or threatened termination to compel compliance with franchisor marketing policies; that gross disparity of bargaining power may result in franchise agreements that amount to adhesion contracts; and that termination may disrupt the reasonable expectations of the parties that the relationship will be a continuing one. *Brach v. Amoco Oil Company,* 677 F. 2d 1213, 1216 (7th Cir. 1982).

Each of the three statutory concerns addresses situations capable of arising only during on-going franchise relationships. That is, to the extent that the PMPA is protective legislation, its protective measures embrace only the named franchisee, while preserving the franchisor's right independently to select its successor franchisees. None of the concerns of the PMPA is pertinent where termination of a franchise occurs because of the death of the franchisee.

In entrusting its real estate, trademarks, and tradenames to Raymond Lucy, the only individual responsible to Amoco to maintain and protect its property, Amoco relied upon Raymond Lucy's personality, integrity, educational background, and prior business experience. The lower courts, recognizing the personal nature of the franchise relationship, consistently find that the PMPA fosters this personal relationship by allowing termination upon the franchisee's death, rather than undermining it by compelling automatic successor status to surviving family members. *Kostantas, supra; Iannuzzi v. Exxon Co., U.S.A.,* 572 F. Supp 716, 721 (D.N.J. 1983); *see also Shell Oil Company v. Marinello,* 307 A. 2d 598, 601 (N.J. 1973).

The PMPA clearly does not purport to regulate the transfer or assignment of a franchise. To the extent that the PMPA addresses transfers or assignments at all, it specifically reserves to franchisors the right to restrict transfer or assignment of a

franchise. For example, in Section 2801(B)(iii), Congress provided that the unexpired portion of a transferred or assigned franchise would be governed by the PMPA only if such transfer or assignment were authorized by the terms of the franchise itself:

> The term "franchise" includes . . . the unexpired portion of any franchise, as defined by the preceding provisions of this paragraph, which is transferred or assigned *as authorized by the provisions of such franchise* or by any applicable provision of State law which permits such transfer or assignment *without regard to any provision of the franchise*. (Emphasis added).

In Section 2806(b), Congress established that the substantive provisions of the PMPA should not be construed to require the transfer or assignment of the franchise contrary to the provisions of the franchise:

> Nothing in this subchapter authorizes any transfer or assignment of any franchise or prohibits any transfer or assignment of any franchise *as authorized by the provisions of such franchise* or by any applicable provision of State law which permits such transfer or assignment *without regard to any provision of the franchise*. (Emphasis added).

By these provisions, Congress clearly intended to allow the terms of the franchise to govern the rights of any successor franchisee, subject to applicable State law.

Thus, although the PMPA elsewhere places restrictions upon the franchisor's common law rights as lessor, it nonetheless, by the terms of Section 2801(B)(iii) and 2806(b), allows the franchisor the basic right to select the person to whom it entrusts the management of its property and its trademark.

The construction of the Act which Petitioners urge this Court to adopt, i.e., that the Act prohibits termination upon the death of the franchisee or that the Act requires selection of

surviving family members as successor franchisees, is contrary to the express provisions of both the PMPA and of the franchise agreement. Petitioners are unable to demonstrate otherwise.

In support of their proposed construction, Petitioners rely solely upon an inquiry made by Congressman Dingell during one House subcommittee hearing. When read in context, it is apparent that Congressman Dingell's examination of the effect of the franchisee's death upon the franchise concluded with his observation that death of the franchisee was probably included among the relevant events set forth in the list of grounds justifying termination. *See* Petition, p. 11.

However, even if Congressman Dingell's hypothetical questions to a committee witness could be read as supportive of Petitioners' argument, that isolated expression made in the course of committee hearings would not supersede statutory language or common law principles. *Pennsylvania Railroad Company v. International Coal Mining Company,* 230 U.S. 184, 57 L.Ed 1446, 33 S.Ct. 893 (1912); *Chandler v. Roudebush,* 425 U.S. 840, 48 L.Ed2d 416; 96 S.Ct. 1949 (1976). As the Court emphasized in *Bankamerica v. United States,* 462 U.S. 122, 76 L.Ed2d 456, 103 S.Ct. 2266 (1983), the views of individual members of Congress are not binding on the United States Supreme Court.

The district court expressly rejected Petitioners' invitation to accept Congressman Dingell's subcommittee statements as the intent of Congress in enacting the PMPA. Its Memorandum Opinion stated:

> A single isolated statement of this sort is not legislative history on which a court may rely in divining the intent of Congress. A far more fruitful approach is to reason from the structure and purpose of the legislation where specific Congressional direction is lacking. To rely on an isolated statement from a single Congressman would be to give

> infinite and hopelessly contradictory content to virtually all important Congressional legislation. Legislation is forged in a furnace of competing interests and tempered with compromise. Every Congressman could, simply by making statements on the record, place his own distinctive interpretation on legislation were the court to accept plaintiffs' argument. It is only where a clear congressional intent emerges from a thorough, comprehensive study of the legislative history that court may safely rely on it. Petitioners' App. A, A-5 (Emphasis in original).

Congressman Dingell's inquiry whether a franchisee's death would constitute a permissible ground for termination raises no inference that death is not a permissible ground for termination. Nor does it undermine the express language of the statute, the weight of the legislative history, or the logic of subsequent lower court decisions.

The district court's decision and judgment against Petitioners was clearly correct, and the court of appeals' decision affirming that judgment does not warrant this Court's review. Petitioners fail to demonstrate otherwise, and the Petition must therefore be denied.

CONCLUSION

Because this Petition involves neither questions of great importance to application of the PMPA nor principles in conflict among the lower courts, the Court should decline to issue a Writ of Certiorari.

Respectfully submitted,

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Dated: April 11, 1986

APPENDIX

15 U.S.C. §2801(B)(iii):

§2801 Definitions

As used in this subchapter:

1(A) * * *

(B) The term "franchise" includes —

(i) * * *

(ii) * * *

(iii) The unexpired portion of any franchise, as defined by the preceding provisions of this paragraph, which is transferred or assigned as authorized by the provisions of such franchise or by any applicable provision of State law which permits such transfer or assignment without regard to any provision of the franchise.

15 U.S.C. §2802(b)(2)(C):

§2802 Franchise relationship

(a) * *

(b)(1) * *

(2) For purposes of this subsection, the following are grounds for termination of a franchise or nonrenewal of a franchise relationship:

(A) * * *

(B) * * *

(C) The occurrence of an event which is relevant to the franchise relationship and as a result of which termination of the franchise or nonrenewal of the franchise relationship is reasonable, if such event occurs during the period the

franchise is in effect and the franchisor first acquired actual or constructive knowledge of such occurrence —

(i) not more than 120 days prior to the date on which notification of termination or nonrenewal is given, if notification is given pursuant to Section 2804(a) of this title; or

(ii) not more than 60 days prior to the date on which notification of termination or nonrenewal is given, if less than 90 days notification is given pursuant to Section 2804(b)(1) of this title.

15 U.S.C. §2802(c)(1)–(12):

(c) As used in subsection (b)(2)(C) of this section, the term "an event which is relevant to the franchise relationship and as a result of which termination of the franchise or nonrenewal of the franchise relationship is reasonable" includes events such as —

(1) fraud or criminal misconduct by the franchisee relevant to the operation of the marketing premises;

(2) declaration of bankruptcy or judicial determination of insolvency of the franchisee;

(3) continuing severe physical or mental disability of the franchisee of at least 3 months duration which renders the franchise unable to provide for the continued proper operation of the marketing premises;

(4) loss of the franchisor's right to grant possession of the leased marketing premises through expiration of an underlying lease, if the franchisee was notified in writing, prior to the commencement of the term of the then existing franchise —

(A) of the duration of the underlying lease, and

(B) of the fact that such underlying lease might expire and not be renewed during the term of such franchise (in the case of termination) or at the end of such term (in the case of nonrenewal);

(5) condemnation or other taking, in whole or in part, of the marketing premises pursuant to the power of eminent domain;

(6) loss of the franchisor's right to grant the right to use the trademark which is the subject of the franchise, unless such loss was due to trademark abuse, violation of Federal or State law, or other fault or negligence of the franchisor, which such abuse, violation, or other fault or negligence is related to action taken in bad faith by the franchisor;

(7) destruction (other than by the franchisor) of all or a substantial part of the marketing premises;

(8) failure by the franchisee to pay to the franchisor in a timely manner when due all sums to which the franchisor is legally entitled;

(9) failure by the franchisee to operate the marketing premises for —

(A) 7 consecutive days, or

(B) such lesser period which under the facts and circumstances constitutes an unreasonable period of time;

(10) willful adulteration, misleading or misbranding of motor fuels or other trademark violations by the franchisee;

(11) knowing failure of the franchisee to comply with Federal, State, or local laws or regulations relevant to the operation of the marketing premises; and

(12) conviction of the franchisee of any felony involving moral turpitude.

15 U.S.C. §2806(b):

§2806 Relationship of statutory provisions to State and local laws

(a) * * *

(b) Nothing in this subchapter authorizes any transfer or assignment of any franchise or prohibits any transfer or assignment of any franchise as authorized by the provisions of such franchise or by any applicable provision of State law which permits such transfer or assignment without regard to any provision of the franchise.